

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1967 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN @ GATTI @ KAMLESH

NATVARBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR. H.R.PRAJAPATI for Petitioner

MS. HANSA PUNANI ASSTT. GP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties. The petitioner challenges order of preventive detention dated 16th October, 1998 made by the Commissioner of Police, Ahmedabad City under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act").

The petitioner is alleged to be a "dangerous person" within the meaning of section 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. The order of detention is based on four offences punishable under section 454, 457, 380 read with section 114 of the Indian Penal Code, registered against the petitioner during the months of May, June and July, 1998 and the statements of the witnesses indicating that the activities of the petitioner are prejudicial to the maintenance of public order.

The petition has been moved through jail and the learned advocate Mr. H.R.Prajapati was, under the order dated 8th July, 1998, appointed to represent the petitioner herein. Accordingly, Mr. Prajapati has appeared for the petitioner.

Mr. Prajapati has submitted that all the offences registered against the petitioner are necessarily problem of maintenance of law and order and neither of the said offences can affect the even tempo of life and public tranquility. Hence, the activities of the petitioner cannot be said to be prejudicial to the maintenance of public order and the order of detention is, therefore, unwarranted. He has submitted that for establishing that the petitioner's activities are prejudicial to the maintenance of public order, the detaining authority has relied upon the statements given by two witnesses whose identity has been withheld under the privilege claimed under section 9(2) of the Act. He has submitted that it is unsafe to rely upon such statements without first verifying whether the witnesses are real persons or not and the contents of the statements given by them are genuine or not. Before recording the subjective satisfaction in respect of the petitioner's activities being prejudicial to the maintenance of public order, the detaining authority ought to have satisfied himself whether the statements given by the witnesses are genuine or not. However, in the present case, such satisfaction is not recorded in the grounds of detention. There is no other contemporaneous evidence to suggest that such satisfaction was in fact arrived at. The subjective satisfaction is, therefore, vitiated.

Ms. Punani, the learned Assistant Government Pleader has relied upon the affidavit in reply made by the detaining authority and has emphasized that the detaining authority had personally verified the genuineness and correctness of the statements of the

witnesses in the unregistered offences. I believe that the assertion made in the affidavit is mechanical and is not supported by the relevant records. The said statements were recorded on 9th October, 1998 and 14th October, 1998 respectively. The witnesses were summoned before the detaining authority on 16th October, 1998. The only verification made by the detaining authority is in respect of the need for claiming privilege under section 9(2) of the Act. Moreover, even the police inspector who recorded the statement has nowhere mentioned that he had examined the genuineness of the statements made by the witnesses. On the contrary, immediately after recording the statements on 14th October, 1998, he has made proposal for detention to the detaining authority. Upon receiving the proposal on the same date, the detaining authority had issued the direction to summon the witnesses with a view to verifying the genuineness of the apprehension voiced by them and to verify their statements in respect of section 9(2) of the Act. I am of the opinion that the sequence of events indicate that the concerned police inspector has not made effort to verify the genuineness of the statements recorded by him before making proposal to the detaining authority nor the detaining authority has verified the genuineness of the statements made by the said witnesses after he received the proposal. The detaining authority could not have recorded his subjective satisfaction in respect of the petitioner's activities being detrimental to the public order without first being sure of the correctness of the said statements. The subjective satisfaction recorded in the instant case is, therefore, vitiated on this ground alone.

Petition is, therefore, allowed. The impugned order of detention dated 16th October, 1998 (Annexure "A" to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

20.7.1999. (R. M. Doshit,J.)

Vyas